



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH,
RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
&
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

**आयकरअपीलसं./ITA No. 372/RJT/ 2023
(निर्धारणवर्ष / Assessment Year: (2013-14))**

Lilavantiben Gordhanbhai Padariya Vrajdharm, Shardanagar Main Road, Mabdi Road, Rajkot – 360001	Vs.	ITO, WD – 1(1)(3), Rajkot Aayakar Bhavan, Race Course Ring Road, Rajkot – 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACGPP7067E		
(Appellant)		(Respondent)

Appellant by : Shri D. M. Rindani, Ld.AR
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR
Date of Hearing : 24/06/2025
Date of Pronouncement : 19/09/2025

आदेश / ORDER

PER DINESH MOHAN SINHA, JM:

Captioned appeal filed by the assessee is directed against the order passed by the National Faceless Appeal Centre [(in short “NFAC/Ld. CIT(A)”) vide order dated 09.09.2023, which in turn assessment order passed by Assessment Unit, Income Tax Department / Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short “the Act”), vide order dated 04.12.2017.

2. Grounds of the appeal raised by the assessee are as follows:

1. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in upholding validity of assessment u/s 147 by issue of notice u/s 148 of the Act.

2 The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in confirming action of assessing officer in making addition of Rs. 1,11,13,196/- by way of alleged difference between sales as per Annual VAT return and sales as per audited accounts by failing to appreciate that the alleged difference was duly reconciled and explained.



3 The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi failed to appreciate that excise duty was not payable at the year-end but was receivable in the balance sheet at year-end.

4 The Appellant craves leave to add, amend, alter and withdraw any ground of appeal at any time up to the hearing of this appeal.

3. Brief facts of the case are that the assessee is engaged in the business of trading in metal & iron scrap through her proprietary concern "M/s Nijanand Enterprise". The Books of accounts are regularly maintained and are duly audited by CA as per the provisions of section 44AB of the Income Tax Act 1961 (hereinafter referred to as the Act). Return of income for the assessment year 2013-14 was filed on 01.10.2014 declaring total income at Rs.8,95,760/-. The Assessment in case of appellant was originally finalized vide order passed u/s 143(3) of the Act dated 15.02.2016 assessing total income at Rs. 9,16,220/- wherein minor addition of Rs 20,459/- was made in the returned income.

4. Subsequently, the AO initiated reassessment proceedings u/s. 147 of the Act by issuing notice u/s 148 dated 21.03.2017 of the Act. The appellant on 26.04 2017 requested to treat the return of income filed u/s 139 of the Act being the return of income in response to impugned notice issued u/s.148 dated 21.03.2017 of the Act. The appellant also requested to provide the copy of reasons recorded for initiating reassessment proceedings by AO.

4.1 Thereafter, the Ld. AO reopened the completed assessment with a view that the income has escaped assessment, since, net figure of sale before the Sales Tax Authority of Rs. 10,04,94,553/- and net figure recorded in the Books of Account of Rs. 11,16,07,749/-, the difference of Rs. 1,11,13,196/- is consider as per income escaped from assessment for AY 2013-14.



5. Upon perusal of the reasons recorded for reopening of the case, it was observed that the case was reopened on the ground that the difference between the sales as per audited financial statements of Rs. 10,04,94,553/- and as per Annual Return in Form No. 205 filed before the sales-tax authority at Rs 11,16,07,749/- is the income of the appellant chargeable to tax, which has been escaped from the assessment.

6. In connection with the above, during the course of reassessment proceedings. the appellant clarified that the alleged difference of Rs. 1,11,13,196/- is due to inclusion of Excise Duty component in the Turnover reported in the Annual Return filed before the sales-tax (VAT) Department It was also submitted that in the audited financial statements, component of excise duty passed on to the customer is shown in the Balance Sheet under the head "duties & taxes, whereas, for the purpose of calculation of sales-tax (VAT), excise duty is included in the turnover. Therefore, alleged difference is due to component of excise duty passed-on to the customer. Further, the appellant furnished reconciliation of sales / turnover as per VAT Return in Form 205 viz-a-viz sales as per books of account and in supporting, also furnished sale register, VAT Return, Excise Return. From the said reconciliation and supporting returns, it was crystal clear that the alleged difference of Rs 1,11,13,196/- is due to element of excise duty.

7. The AO, however, in total disregards to the appellant's submission vide order passed under section 143(3) r.w.s. 147 dated 04.12.2017 assessed the total income of appellant at Rs 1,20,29,420/-, wherein he made addition of Rs 1,11,13,196/- being alleged difference of excise and other tax component in sales as per Annual VAT Return in Form No 205 and sales as per Audit Report.



8. That the assessee filed an appeal against the order of the AO dated 04.12.2017. The Ld. CIT(A) has dismissed the appeal.

9. That the assessee filed an appeal against the impugned order of the Ld. CIT(A) dated 09.09.2023 before the Tribunal.

10. During the course of hearing, the Ld. AR of the assessee submitted that the amount reflected as excise duty and VAT in books of account and Audit Report. However, books of audit and books of account there are no difference. The difference of “Books of Account and Audit Report” explanation is explained by the assessee as follows;

Total Sales as per VAT Return Form 205		Rs. 1,16,07,749/-
As per Books:		
Less: Sales Return	Rs. 4,14,999/-	Rs.10,04,94,553/-
Excise on sales	Rs. 98,69,120/-	
Edu. Cess on sales	Rs. 1,68,429/-	
S & H Edu. Cess on sales	Rs. 84,054/-	
Add. Duty on sales	Rs. 5,77,063/-	
Difference between total VAT Return – total sales		Rs. 1,11,13,196/-

11. On the contrary, the Ld. Sr. DR for the revenue has relied upon the order of the Ld. CIT(A).

12. We have heard both the parties and perused the material available on record, and the paper-book & written submission filed by the assessee before this Tribunal and all are on record. That the case was reopened and in the reopened assessment assessing officer made an addition of Rs. 1,11,13,196/-.

(a) On perusal of record of assessment we found that the profit and loss account for the year ended on 31.03.2013, net sales figure shown as Rs.10,04,94,553/-. A annual return as per Audited Accounts and Form



No. 205 filed before the Sales Tax Authorities, the net sales shows at Rs.11,16,07,749/-. Hence the difference of Rs. 1,11,13,196/-.

(b) We note that the main reason for difference between the purchase as per Audited Accounts is not including all taxes while purchase as per 26-AS is including of all taxes i.e., exercise duty & G-VAT. The TCS @ 1% is dedicated on above amount with tax.

(c) We note that during the course of original assessment proceeding the appellant in reply to notice explain the difference in turnover is due to exercise duty and G-VAT taxes.

(d) We note that Ld. CIT(A) observed in the order that the difference on account of Excise Duty and other taxes which is disclosed in the Balance Sheet. Further, it was observed that these taxes are shown in the Balance Sheet. We note that the assessee has maintain Books of Account on mercantile basis, Audit Report and computation of income, the tax calculation and paid are recorded in the books of account for AY 2013-14. The assessee has furnished annual report Form-205 filed with Gujarat VAT-2003 (sales tax) and also submitted annual return in Form-IIIB for the relevant period, and the same is placed on record. We further observed that tax is defined u/s.2(43) and income is defined Section 2 Sub Section 24 of the Income Tax Act. That according to the mercantile system of accounting the tax has to be separately shown in the books. That the alleged difference of Rs.1,11,13,196/- is due to inclusion of Excise Duty Component in the Turnover reported in the Annual Return filed before the sales-tax (Gujarat-VAT) Department. We note that in the audited financial statements, component of excise duty passed-on to the customer is shown in the balance sheet under the head "duties & taxes", whereas, for the purpose of calculation of sales-



tax (VAT), excise duty is included in the turnover, the assessee furnished reconciliation of sales/turnover as per Gujarat-VAT return in Form 205 viz-a-viz sales as per books of account, upon perusal it become crystal clear that the alleged difference of Rs. 1,11,13,196/- is due to element of excise duty included in turnover, which is not forming part of turnover as per audited financial statements.

13. Since we allow the appeal of the assessee on merit, therefore we did not adjudicate the ground no. 1 challenging the reopening of assessment is becomes academic in nature. The ground no. 4 is general in nature do not require adjudication.

14. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19-09-2025

Sd/-
(Dr. A. L. SAINI)
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date: 19/09/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

(True Copy)

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot